

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**TERRY WALTON, GUARDIAN OF  
RICHARD CRAWFORD,**

**Plaintiff,**

**v.**

**LOUIS STOKES CLEVELAND DEPT.  
OF VA MEDICAL CENTER,**

**Defendant.**

**CASE NO. 1:11 CV 397**

**JUDGE DONALD C. NUGENT**

**MEMORANDUM OPINION**

This matter is before the Court upon the Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction filed by Defendant, the Department of Veterans Affairs (Docket #5). Defendant asserts that this Court lacks subject matter jurisdiction over Plaintiff's claims because Plaintiff failed to exhaust his administrative remedies pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. On April 5, 2011, Plaintiff filed his Response, conceding that the exhaustion of administrative remedies is a jurisdictional prerequisite to filing suit and asking the Court to either stay or dismiss the case without prejudice so that he may have the opportunity to exhaust his administrative remedies.

### Conclusion

When a defendant moves to dismiss on grounds of lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Plaintiff concedes that he has not yet exhausted his administrative remedies, a requirement under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.

The Motion to Dismiss filed by Defendant, Department of Veterans Affairs (Docket #5) is GRANTED. This case is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: \_\_\_\_\_

